

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 1446 - SB 1365

March 5, 2023

SUMMARY OF BILL: Prohibits the state or its political subdivisions from constructing, contracting for, or otherwise allowing the construction or operation of a cell tower on, or within 1,640 feet of school property. Such prohibition applies to the construction or operation of, or contracts entered into, renewed, or amended for, cell towers on or after the effective date of the act.

FISCAL IMPACT:

Other Fiscal Impact – A precise impact to state and local government revenue due to cancellation of on-going contracts and to state and local government expenditures due to litigation cannot be estimated. *

Assumptions:

- Federal law places certain restrictions on local zoning authority over construction and modification of wireless structures. Specifically:
 - The *Telecommunications Act of 1996*:
 - Permits local zoning authority over placement of telecommunication towers and authorizes local governments to deny construction permit applications for cell towers if the denial is based on a reasoned approach;
 - Authorizes the Federal Communications Commission (FCC) to preempt the exercise of local zoning authority if it is determined that the denial was not based on a reasoned approach;
 - Prohibits any action that would ban altogether the construction, modification, or placement of telecommunication towers; and
 - The *Spectrum Act of 2012*:
 - Prohibits state and local governments from denying certain requests to modify existing wireless structures that do not substantially change the physical dimensions of the structures.
- Prohibition of the construction or operation of cell towers within a certain distance of schools, therefore, conflicts with federal law.
- As of January 1, 2022, there were over 3,500 cell towers in the state. It is not known how many of these towers are within 1,640 feet of a school.
- Such prohibition would have a significant fiscal impact on any political subdivision that currently contracts with a telecommunications provider; however, the contracting terms

HB 1446 - SB 1365

for these agreements are not known, so any fiscal impact to state or local government revenue cannot be determined.

- It is assumed that the proposed blanket prohibition would not be considered as “based on a reasoned approach” and would be preempted by the FCC; any action taken by the FCC would then be a return to the status quo and would not result in any significant fiscal impact to state or local government.
- The proposed legislation may result in telecommunications providers suing political subdivisions for the right to construct new cell towers and to modify existing ones.
- The likelihood of litigation would be dependent on the timing of FCC intervention, which cannot be determined. Therefore, any increase to state or local expenditures as a result of litigation cannot be estimated.
- Any increase in local expenditures as a result of litigation is considered mandatory.

IMPACT TO COMMERCE:

Other Commerce Impact – The extent and timing of any impact to business revenue and expenditures cannot be determined.

Assumptions:

- The proposed legislation would result in a decrease to business expenditures due to cancellation of on-going cell tower contracts with political subdivisions of the state. However, there would also be a decrease in business revenue due to cell towers no longer operating. Any fiscal impact to commerce cannot be determined.
- In the event that a telecommunications provider elected to sue a political subdivision for violating federal law, there would be an increase to business expenditures, the extent and timing of which cannot be estimated.
- The proposed legislation is not expected to have any impact on jobs in Tennessee.

**Article II, Section 24 of the Tennessee Constitution provides that: no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista Lee Carsner, Executive Director

/mp